

OCT 13 2020

Richard W. Tentler, SBN 67787
141 West Second Street
Oxnard, California 93030
Tel: (805) 486-5277; Fax: (805) 483-6290

Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF VENTURA

JESSE RIOS, JHONATHAN RIOS, and	) CASE NO:
ROSALVA VILLALVAZO,)
	) COMPLAINT FOR DAMAGES
Plaintiffs,)
	) 1. BREACH OF ORAL CONTRACT
OSCAR VASQUEZ, individually & dba	) 2. INTENTIONAL MISREPRESENTATION
EXPERTS OF REAL ESTATE & CAL	) 3. FRAUDULENT CONCEALMENT
REAL ESTATE EXPERTS, and	) 4. CONSTRUCTIVE FRAUD
Does 1 through 25, inclusive	) 5. BREACH OF FIDUCIARY DUTIES
Defendants.	) 6. NEGLIGENT MISREPRESENTATION
	) 7. PROFESSIONAL NEGLIGENCE
	) 8. GENERAL NEGLIGENCE
)
)

Plaintiffs, JESSE RIOS, JHONATHAN RIOS & ROSALVA VILLALVAZO, allege as follows:

FIRST CAUSE OF ACTION

(By all plaintiffs against all defendants for Breach of Oral Contract)

1. The true name and capacities, whether individual, corporate, associate, or otherwise of defendants DOES 1 through 25, inclusive, are unknown to plaintiffs at this time, who therefore sue these defendants by such fictitious names. When the true name and capacities of these defendants is ascertained, plaintiffs will ask leave of the court to amend this complaint accordingly. Plaintiffs are informed and believe, and upon such information and belief allege, that each of the fictitiously named defendants sued herein is responsible in some actionable

1 manner for the events and happenings herein alleged and thereby legally and proximately
2 caused injuries and damages to plaintiffs.

3 2. At all times herein mentioned, each of the defendants was the agent, director,
4 officer, trustee, attorney, representative, joint venturer, child, parent, partner, and/or employee
5 of each of the remaining defendants, and in doing the things herein mentioned, was acting
6 within the course and scope of that relationship, and with the knowledge, consent and
7 permission, both express and implied, of each of the remaining defendants.

8 3. At all times herein mentioned, plaintiffs and defendants were residents of the
9 County of Ventura, State of California.

10 4. The wrongful conduct out of which this lawsuit arises occurred in the City of
11 Oxnard, California.

12 5. Plaintiffs are informed and believe, and thereon allege, that at all times herein
13 mentioned, defendant OSCAR VASQUEZ and DOES 1 through 5, and each them, are
14 individuals licensed as a real estate broker in the State of California and doing business as such
15 in the County of Ventura, California with defendant Oscar Vasquez being issued broker license
16 01188999 by the California Department of Real Estate.

17 6. Plaintiffs are informed and believe, and thereon allege, that at all times herein
18 mentioned, defendants EXPERTS OF REAL ESTATE and CAL REAL ESTATE EXPERTS
19 were either businesses owned and operated under those fictitious names by Oscar Vasquez or
20 otherwise other business entities owned and controlled by Oscar Vasquez.

21 7. Plaintiffs are informed and believe, and thereon allege, that at all times herein
22 mentioned, defendants DOES 10 through 25, and each them, are businesses of unknown type
23 doing business as such in the County of Ventura, California.

24 8. In or about June, 2019, plaintiffs became aware that Francisco & Elizabeth
25 Gillen, who owned and operated the business known as Francisco's Mexican Restaurant at 345
26 South C Street, Oxnard, California, wished to sell that business. The business was listed with
27 for sale with defendant Oscar Vasquez and Does 1 through 5. Upon contacting defendant
28 Vasquez and Does 1 through 5 [hereinafter referred to as 'DEFENDANT BROKERS'], those

1 said Defendant Brokers advised plaintiffs that they could also represent plaintiffs in the sale and
2 provide them with all due diligence, financial advice, and all other advice and services a
3 competent, licensed broker could and should provide a prospective buyer in evaluating and
4 financing the purchase of a business.

5 9. Plaintiffs had never before purchased a business, knew nothing of the valuation of a
6 business, financing a purchase, or any other aspect of a business opportunity purchase and
7 therefore fully relied on the expressed expertise of said defendants in the negotiations and
8 financing of the purchase of Francisco's Mexican Restaurant. Plaintiffs therefore, in or about
9 June 2019, entered into an oral agreement with defendants, and each of them, whereby
10 plaintiffs retained defendants, and defendants agreed to act in their professional capacity as
11 licensed real estate brokers and/or agents, or as employees thereof, and to diligently and
12 faithfully represent plaintiffs in the evaluation, pricing, financing, and negotiation of each and
13 every term and condition of the purchase of the business.

14 10. Plaintiffs have diligently and fully performed all covenants, conditions, and
15 obligations due on their part under the aforementioned agreement, save and excepting those
16 terms and conditions from which plaintiffs performance has been legally excused.

17 11. Defendants, and each of them, breached the aforementioned agreement in
18 absolutely every possible way. Recognizing the lack of sophistication of plaintiffs who had no
19 experience in purchasing a business and that they could easily be manipulated and taken
20 advantage, said defendant brokers lured plaintiffs into a purchase agreement that primarily
21 benefited defendant brokers and their selling clients and left defendant Rosalvo Villalvazo
22 facing the loss of her real property located at 11461 Oxnard Street, North Hollywood,
23 California.

24 12. Among the egregious acts committed by defendant brokers in violation of their
25 fiduciary and professional duties as brokers, and in pursuit of their active fraud of plaintiffs as
26 alleged hereafter, were the following:

27 A. Despite the customary and normal practice of a broker's commission to be
28 paid by the selling party in the described business opportunity transaction, defendant brokers

1 taking advantage of the naiveté, caused them to agree to pay the commission.

2 B. Further taking advantage of their lack of sophistication and realizing they
3 could enhance their compensation using defendant Rosalvo Villalvazo's equity in her real
4 property in North Hollywood, California, defendant broker's against the interests of plaintiffs
5 advised them to use that property to finance the purchase price so they could gain an additional
6 commission which they charged for supposedly providing further brokerage services for
7 negotiating a private party "hard money" loan which can only be lawfully negotiated by a
8 broker pursuant to California Business & Professions Code Section 10131. By acting to broker
9 or obtain such private financing secured by plaintiff Villalvazo's real property, defendant
10 brokers were required to act only in the best interests of plaintiffs including, not limited to, a
11 determination of their ability to pay the loan and provide the disclosure required by law
12 including Business and Professions Code Section 10240.

13 C. Failed to determine that the fair and reasonable value of the business was far
14 less than \$140,000.00 by not obtaining and examining relevant financial documents relating to
15 the operation of the business which said broker defendants intentionally failed to do as they
16 realized plaintiffs were anxious and eager to own a business and would agree to any terms they
17 were told by a broker were fair and affordable.

18 D. Defendants intentionally failed to consider any other loan/financing options
19 such as a SBA loan, bank loan, or other purchase loan options as defendants solely sought
20 private financing which would generate the highest possible commissions for themselves. This
21 resulted in unfavorable terms to plaintiffs who otherwise had other loan options which would
22 have provided far better terms in light of the equity/security plaintiff Villalvazo was able to
23 provide with her real property.

24 E. Reflecting their objective and motivation to benefit only themselves,
25 defendant brokers secured part of their commission against Villalvazo's real property through a
26 deed of trust senior to that of their seller clients to insure payment to themselves.

27 13. As a direct and proximate result of defendants' breach of the aforementioned
28 agreement as herein alleged, plaintiffs' have sustained special and general damages in an

1 amount according to proof.

2 14. As a further, direct and proximate result of defendants' breach of the
3 aforementioned agreement as herein alleged, plaintiffs have been unable to meet certain of their
4 financial obligations and are now facing the filing of lawsuit and the initiation of a foreclosure
5 against Villalvazo's real estate. Plaintiffs have thereby incurred a financial loss. The full and
6 exact amount of the financial loss is unknown at this time. Plaintiffs will ask leave of court to
7 amend this complaint to set forth such amount when it has been ascertained.

8 15. As a further, direct and proximate result of the defendants' breach of the
9 aforementioned agreement as herein alleged, plaintiffs request pre-judgment and post-judgment
10 interest as allowed by applicable law and/or statute, in an amount to be proven at time of trial.

11 **SECOND CAUSE OF ACTION**

12 **(By all plaintiffs against all defendants for Intentional Misrepresentation)**

13 16. Plaintiffs repeat, reallege, and incorporate herein by this reference, each of the
14 allegations contained in paragraphs 1 through 5, inclusive.

15 17. Beginning in or about June 2019, defendants, and each of them, promised
16 plaintiffs as aforementioned to act in their professional capacity as licensed real estate brokers
17 and/or agents and to diligently and faithfully represent plaintiffs in the purchase of the said
18 restaurant business and negotiation and acquisition of private financing using plaintiff
19 Villalvazo's real property

20 18. Defendants held themselves out to the public, including plaintiffs, as having
21 superior knowledge, skills, training, information, and personal contacts in the private lending
22 market and in negotiating the best possible terms for the acquisition of a business opportunity in
23 their capacities as licensed brokers. Plaintiffs had no similar or special skill, training,
24 experience, and personal contacts and this was known to defendants. Plaintiffs each relied on
25 defendants to assist them and advise them in their financial need and to protect their present and
26 future financial security. As a result, plaintiffs each placed confidence in the fidelity, honesty,
27 and integrity of defendants, and having entrusted defendants with their financial well-being and
28 empowering defendants with authority to negotiate the best possible terms for the purchase of

1 the business and acquisition of a private lender, to negotiate favorable terms. and by virtue of
2 the rights, duties, authorities and/or obligations imposed by law, statute, and/or contract on
3 broker defendants, a special, confidential and fiduciary relationship existed between plaintiffs
4 and defendants.

5 Beginning towards in June 2019, and continuing thereafter, defendants, and each of
6 them, made written and oral representations of past or existing material facts with the intent of
7 inducing plaintiffs to enter into a refinancing agreement and to not question defendants acts
8 and/or omissions thereafter. These representations were contained in among other ways, within
9 written and oral representations made to plaintiffs, and included, without limitation, the
10 following:

11 (a) that defendants, and each of them, were experienced in the loan
12 brokerage business;;

13 (b) that defendants, and each of them, were experienced in investigating the
14 value and terms best for a buyer of a business opportunity of the type presented by
15 Francisco's Mexican Restaurant and had thoroughly investigated and monitored the
16 operation and value of the business.

17 19. Plaintiffs each relied upon the aforementioned representations entered into the
18 aforementioned loan and purchase agreement for the business believing that their financial
19 interest would be protected, and refrained from questioning defendants or from seeking any
20 other loans or other terms, price, and conditions for the acquisition of the business opportunity.

21 20. In fact, the aforementioned representations were false and defendants, and each
22 of them, knew in making the aforementioned representations that they were false and/or were
23 recklessly made such representations without knowing whether they were true or false.
24 Defendant Brokers also were motivated by their recognition of the gullibility of plaintiffs who
25 they realized would be completely reliant on the good faith of defendants in representing them
26 in the purchase and loan and therefore took advantage of the naivete to negotiate the best
27 possible deal to generate the greatest commission for themselves and to the complete
28 disadvantage of plaintiffss.

1 21. Defendants, and each of them, despite the aforementioned representations to the
2 contrary, and the trust and confidence reposed in them by plaintiffs, knew or should have
3 known that the aforementioned representations were untrue, and made these representations
4 with the intent to defraud plaintiffs so as to thereby gain profits and benefits for themselves.
5 Plaintiffs were each unaware of the falsity of defendants' representations, relied upon them, and
6 signed the aforementioned loan documents. Under these circumstances, plaintiff 'reliance on
7 the representations of defendants was reasonable.

8 22. It was not until after the loan escrow closed in or about October 2019 that
9 plaintiffs discovered that the representations made by defendants were false.

10 23. As a direct and proximate result of defendants' wrongful conduct, as herein
11 alleged, plaintiffs have sustained or will sustain special damages, including but not limited to
12 the loss of their deposit of \$20,000 into escrow.

13 24. As a further, direct and proximate result of defendants' wrongful conduct as
14 herein alleged, plaintiffs have been unable to meet certain of their financial obligations.
15 Plaintiffs have thereby incurred a financial loss. The full and exact amount of the financial loss
16 is unknown at this time. Plaintiffs will ask leave of court to amend this complaint to set forth
17 such amount when it has been ascertained.

18 25. As a further, direct and proximate result of the defendants' wrongful conduct as
19 herein alleged, plaintiffs request pre-judgment and post-judgment interest as allowed by
20 applicable law and/or statute, in an amount to be proven at time of trial.

21 26. As a further, direct and proximate result of defendants' wrongful conduct as
22 herein alleged, plaintiffs have become mentally upset, distressed and aggravated. Plaintiffs
23 claim general damages for such mental distress and aggravation in an amount in excess of the
24 minimum jurisdiction of the Superior Court, to be proven at time of trial.

25 27. Defendants' conduct was intended by defendants to cause injury to plaintiffs or
26 was carried on by defendants with a conscious disregard of the rights of plaintiffs, and
27 subjected plaintiffs to cruel and unjust hardship in conscious disregard of plaintiffs' rights, and
28 was an intentional misrepresentation, deceit, or concealment of material facts known to the

1 defendants with the intent to deprive plaintiffs of property, legal rights, or to otherwise cause
2 injury, such as to constitute malice, oppression or fraud under Civil Code § 3294, thereby
3 entitling plaintiffs to punitive damages in an amount appropriate to punish or set an example of
4 defendants, in an amount to be proven at time of trial.

5 **THIRD CAUSE OF ACTION**

6 **(By all plaintiffs against all defendants For Fraudulent Concealment)**

7 28. Plaintiffs repeat, reallege, and incorporate herein by this reference, each of the
8 allegations contained in paragraphs 1 through 27, inclusive, and paragraphs 24 through 28,
9 inclusive.

10 29. Beginning in May 2019 and continuing thereafter, defendants, and each of them,
11 undertook and commenced a course of conduct of concealment or suppression of material facts
12 amounting to a design, scheme, plan, and course of fraudulent business practice, conversion,
13 misappropriation, and deceit relating to the refinancing of the first and second mortgage secured
14 by plaintiffs' residence as to obtain profits and benefits for themselves alone. The
15 aforementioned concealment or suppression of material facts includes, without limitation, the
16 following:

17 (a) that defendants, and each of them, were not experienced in the loan
18 brokerage business, and in particular to the negotiation of the best possible terms for the
19 purchase of a business opportunity like that of Francisco's Mexican Restaurant.;

20 (b) that defendants, and each of them, had not thoroughly investigated and
21 monitored loan availability, interest rates, and costs, and in particular the loan
22 availability, interest rates, and costs in the acquisition of private loans and also the
23 availability of other small business refinancing of residential loans such as plaintiffs;

24 (c) that plaintiffs' would be financially unable to comply with the terms of
25 the purchase agreement with broker defendants' seller clients thus leading to the loss of
26 plaintiffs' down payment.

27 30. Defendants, and each of them, at all times herein relevant, intentionally
28 concealed, suppressed and/or failed to disclose to plaintiffs the aforementioned facts with the

1 intent to defraud plaintiffs and thereby gain profits and benefits for themselves alone.

2 31. Plaintiffs are informed and believe, and thereon allege, that defendants, and each
3 of them have engaged in other fraudulent business practices relating to the refinance of their
4 first and second mortgage of which plaintiffs are presently unaware. Plaintiffs will seek leave
5 of the court to amend this complaint at such time as plaintiffs discover the other acts and/or
6 omissions of defendants.

7 32. Plaintiffs were, at all times relevant, unaware of defendants' intent to gain
8 profits and benefits for themselves alone or that defendants, and each of them, had made any
9 acts and/or omissions so as to do so. Had plaintiffs known, they would not have entered into
10 the purchase transaction or private money loan and would have instead immediately terminated
11 their relationship with defendants, closed escrow, revoked and/or rescinded the loan agreement
12 and sought new mortgage brokers and/or lenders.

13 33. It was not until on or about June 2020 that plaintiffs became aware of
14 defendants' fraudulent concealment, suppression, and/or failure to disclose the aforementioned
15 facts.

16 **FOURTH CAUSE OF ACTION**

17 **(By all plaintiffs against all defendants for Constructive Fraud)**

18 34. Plaintiffs repeat, replead, reallege and incorporate herein by this reference each
19 of the allegations contained in paragraphs 1 through 33, inclusive, and paragraphs 16 through
20 34, inclusive.

21 35. Despite the special, confidential and fiduciary relationship between plaintiffs
22 and defendants, and each of them, defendants abused, took advantage of, and defrauded each
23 plaintiffs as herein above alleged.

24 36. Plaintiffs are informed and believe and thereon allege that defendants, and each
25 of them, have breached their special, confidential and fiduciary relationship by other acts and/or
26 omissions of which plaintiffs are unaware. Plaintiffs will seek leave of the court to amend this
27 complaint at such time as plaintiffs' discover the other acts and/or omissions of defendants
28 constituting such breach.

1 **FIFTH CAUSE OF ACTION**

2 **(By all plaintiffs against all defendants for Breach of Fiduciary Duties)**

3 37. Plaintiffs repeat, replead, reallege and incorporate herein by this reference each
4 of the allegations contained in paragraphs 1 to 36, inclusive.

5 38. Defendants, and each of them, breached their fiduciary duty to plaintiffs and
6 violated their relationship of trust and confidence by misrepresenting, and failing to obtain
7 and/or disclose the true value and best terms and conditions for the purchase of the Francisco's
8 Mexican Restaurant and that defendants were securing an advantage over plaintiffs by
9 misleading them to their prejudice, as herein alleged.

10 39. Plaintiffs each placed confidence in and relied on defendants until on or about
11 June 2020 when plaintiffs discovered defendants' wrongful acts and/or omissions in breach of
12 their fiduciary duty. Until such date, plaintiffs reasonably relied on defendants in view of their
13 relationship as agents and by virtue of their special, confidential and fiduciary relationships as
14 aforementioned.

15 **SIXTH CAUSE OF ACTION**

16 **(By all plaintiffs against all defendants for Negligent Misrepresentation)**

17 40. Plaintiffs repeat, replead, reallege and incorporate herein by this reference each
18 of the allegations contained in paragraphs 1 through 39, inclusive.

19 41. The aforementioned representations were in fact false. Defendants, and each of
20 them, made and continued to make the aforementioned representations without reasonable
21 grounds for believing that the representations were true.

22 **SEVENTH CAUSE OF ACTION**

23 **(By all plaintiffs against all defendants for Professional Negligence)**

24 42. Plaintiffs repeat, replead, reallege and incorporate herein by this reference each
25 of the allegations contained in paragraphs 1 through 41, inclusive.

26 43. Despite the special, confidential, and fiduciary relationship between plaintiffs
27 and defendants, and each of them, as the agents of plaintiffs in the negotiation of the terms and
28 conditions for the purchase of Francisco's Mexican Restaurant and acquisition of financing for

1 that purchase secured by plaintiff Villalvazo's real property, defendants, and each of them,
2 negligently and carelessly performed and/or failed to perform their various duties, functions and
3 tasks required as licensed real estate brokers and/or agents, acting as such on behalf of
4 plaintiffs, both in law and pursuant to the agreements of the parties hereto.

5 **EIGHTH CAUSE OF ACTION**

6 **(By all plaintiffs against all defendants for General Negligence)**

7 44. Plaintiffs repeat, reallege, and incorporate herein by this reference, each of the
8 allegations contained in paragraphs 1 through 43.

9 45. In entering into a business purchase agreement and related private money loan,
10 plaintiffs relied on the skill and expertise of defendants, and each of them, to provide all
11 necessary guidance, directions, and assistance to obtain the best possible purchase terms and
12 best possible financing terms to purchase the business. By virtue of the relationship between
13 plaintiffs and defendants, and each of them, and in accordance with the duties arising out of
14 their relationship, and the promises and assurance made by defendants, and each of them,
15 defendants owed a duty to plaintiff to exercise due care in their promise of providing all
16 necessary guidance, direction and assistance to plaintiffs to obtain such the appropriate type of
17 loan and negotiate the best possible purchase terms.

18 46. Defendants and each of them were bound to use the skill, prudence, and
19 diligence commonly exercised by practitioners of their trade. Inherent with this duty is the
20 obligation to exercise reasonable care so that all due diligence was used to negotiate the best
21 possible terms including the determination of the fair market value of Francisco's Mexican
22 Restaurant and using a loan financially viable for plaintiffs.

23 47. Defendants, and each of them, negligently failed to exercise reasonable care in
24 their promise of providing all necessary guidance, direction and assistance to plaintiffs so as to
25 obtaining a loan at the least cost was to receive sufficient cash after the close of escrow to allow
26 plaintiffs to payoff other personal financial obligations.

27 WHEREFORE, plaintiffs pray for judgment against defendants, and each of them, as
28 follows:

1 UPON THE SECOND, THIRD, FOURTH, AND FIFTH CAUSES OF ACTION:

2 1. For general damages, according to proof at time of trial;

3 2. For special damages, according to proof at time of trial,

4 3. Pre-judgment interest according to any provision of law, including but not
5 limited to Code of Civil Procedure § 998, and Civil Code §§ 3287 and/or 3288, according to
6 proof at time of trial;

7 4. Punitive and exemplary damages, according to proof at time of trial;

8 UPON THE FIRST, SIXTH, SEVENTH AND EIGHTH CAUSES OF ACTION:

9 1. For general damages, according to proof at time of trial;

10 2. For special damages, according to proof at time of trial;

11 4. Pre-judgment interest according to any provision of law, including but not
12 limited to Code of Civil Procedure § 998, and Civil Code §§ 3287 and/or 3288, according to
13 proof at time of trial;


14 UPON ALL CAUSES OF ACTIONS:

15 1. For costs of suit incurred herein; and

16 2. For such other and further relief as the court deems just and proper.

17 DATED: October 12, 2020

18 By:

19 
20 RICHARD W. TENTLER
21 Attorneys for Plaintiffs,
22 Jesse & Jhonathan Rios and
23 Rosalva Villalazo
24
25
26
27
28